The learned judge, in my view, rightly held that the evidence showed that in 1941 the appellant was a kept mistress and that there was nothing in their post-war relationship which would justify his holding that she had become a secondary wife thereafter. The evidence in the case shows clearly that the position of the appellant in 1941 was that of a kept mistress, and indeed it would have been difficult for the learned trial judge to come to any other conclusion, having regard to the proceedings which were initiated by the appellant against the deceased in 1941. Counsel for the appellant's contention, that a marriage should be inferred from the learned trial judge's finding that prior to 1941 there had been an agreement to form a permanent union, cannot be sustained. For obvious reasons an agreement to keep a woman is not equivalent to an agreement to marry her; strong evidence that a woman is a kept mistress negatives the inference that a marriage has taken place. The evidence regarding repute of marriage is slender and for the most part relates only to the pre-occupation days.

In my view, the learned judge was correct in finding that the appellant had failed to prove that she was a secondary wife. I would dismiss this appeal with costs, and order the deposit in Court to be paid out to the respondents against their costs.

Brown, J.: — It seems to me that the first paragraph of the head-note to the case of *Re Lee Choon Guan, decd.*[1] is misleading, since it appears to lay down a general rule that in order to establish a Chinese secondary marriage the plaintiff must prove the three elements which are therein set out. But I cannot find that any such general rule is laid down in the Judgment. The three elements were contained in a submission by Counsel, which he was making on the facts of that case. And they were accepted by the learned Judge as a convenient basis on which to review the evidence which was before him in that case. I can see nothing in that decision which is at variance with the later decision in *Er Gek Cheng v. Ho Ying Seng*[3]. And I think that upon the authorities the law can now be regarded as settled that in order to establish a claim to be a secondary wife a consensual marriage must be proved. The means by which the mutual consent to marry is to be proved is a matter of evidence in each case. How can it be said, for example, that in a case where the plaintiff produces documentary evidence of a formal contract to marry, coupled with evidence of long cohabitation, it is necessary to go further and establish marriage by repute? Similarly where the evidence establishes that the plaintiff has been accepted and recognised by the deceased's principal wife and family that would be almost as conclusive as a formal contract. But the absence of such recognition does not of necessity disprove the marriage. A clandestine marriage, which is unknown to the family, is legally possible, though it may be hard to prove. I think that the three elements referred to in the head-note of the *Lee Choon Guan*[1] case are valuable as a guide to what the Court will look for in a case where there is no conclusive evidence on which to base its decision, and that they may be taken as a sound basis on which to review the evidence.

In the present case the learned Judge followed the head-note and considered that the onus was on the appellant to establish (a) cohabitation, (b) an intention to form a permanent union and (c) repute of marriage. For the reasons which I have given I do not think that that correctly stated the burden which lay upon the appellant. The appellant had to establish a consensual marriage — no more and no less. But, as the learned Judge rightly said, all three matters were questions of fact. He reviewed the evidence under those three headings. Mr. Mallal argued that having found as a fact that there was an intention to form a permanent union that should have concluded the matter. If he had found as a fact that there was a mutual intention to form a permanent union in marriage I should agree with Mr. Mallal, and I should say that having also found cohabitation he ought not to have required the appellant to establish the third element of marriage by repute. But he did not find that the permanent union which it was intended to form was a permanent union in marriage. And if he had I think we should have had to consider whether, having regard to the whole of the evidence — particularly the evidence relating to the legal proceedings in 1941 — such a finding was not contrary to the weight of evidence.

In my opinion the learned Judge's finding that the appellant had failed to prove her claim to have been a secondary wife was correct upon the evidence which was before him, and I think that this appeal should be dismissed.

Appeal dismissed.

SULTAN MOHAMED v. REGINA.

[App. Cr. Juris. (Brown, J.) September 3, 1952]
[Singapore — Magistrate's Appeal No. 113 of 1952]

Penal Code, s. 324 — Weapon of offence — What is — Magistrate's grounds of judgment — What it should contain.

The question, in determining whether the charge is properly laid under section 324, is whether the instrument, is intrinsically likely to cause death; not whether the instrument, if used in a certain way, might cause death.

The Magistrate ought to show in his grounds of judgment that the defence has been carefully considered and his reasons for rejecting it.

MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

A. H. Simpson (Crown Counsel) for the Crown.

Brown, J. : — In accordance with sub-section (2) of section 313 of the Criminal Procedure Code I set out the grounds upon which the Magistrate's order was varied :—

The appellant was charged under section 324 of the Penal Code with voluntarily causing hurt by means of a stick which used as a weapon of offence is likely to cause death. The evidence was that the stick was about 36" in length and 1½" in width. No doubt this instument, if used in a certain way, could cause death. So could many other lesser instruments. But the object of the section is to punish more severely an offender who uses a weapon such as a knife or a hot iron, for he is a much more dangerous member of society than a man who only uses a stick. The question, in determining whether the charge is properly laid under this section, is whether the instrument is intrinsically likely to cause death; not whether the instrument, if used in a certain way, might cause death. In my opinion the charge should have been under section 323, and I substituted a conviction under that section.

In the course of his argument counsel for the appellant complained that the grounds of Judgment were meagre. I considered that there was some substance in that complaint. The main ground for complaint is that the defence is not referred to at all. This should always be done. The Magistrate ought to show in his grounds of Judgment that the defence has been carefully considered and his reasons for rejecting it.

Magistrate's order varied.

QUEK BEE YAM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Storr, J.) May 31, 1952]
[Johore Bahru — Criminal Appeal No. 6 of 1952]

Opium and Chandu Proclamation No. 49 of 1946, s. 3(1) — Possession of opium — Criminal Procedure Code (Cap. 6), s. 173(f).

On March 14, 1951, the appellant was a passenger in a car which, on instruction by the police, was stopped at the 1st milestone road block Mersing-Jemaluang road and was taken to Mersing Police Station. The car was driven by one Teoh Geok Soo (1st accused in the lower Court) and the appellant (2nd accused in the lower Court) was seated beside him. The car was searched and, concealed under zinc covers which were properly screwed to the floor board and covered over with rubber matting in the front of the car both under the places where the driver and the appellant, the passenger, would normally have their feet while in the car, and also in the rear of the car, the police found 11 packets of opium. Both the accused were arrested and charged. The learned Magistrate found both accused guilty and accordingly convicted them.

Held, that the conviction could not be sustained because the prosecution failed to prove that (a) the appellant had knowledge that the opium was concealed in the containers under the floor boards, (b) such opium was in his custody, (c) he had any control over it, (d) he intended to exercise such control, or (e) he was in any way in possession of it.

CRIMINAL APPEAL.

C. G. Toh for the appellant.

T. R. Hepworth (Legal Adviser, Johore) for the respondent.

Cur. Adv. Vult.

Storr, J. : — The facts briefly in this case were that the appellant was a passenger in an Austin 7 car (No. S 4149) driven by one Teoh Geok Soo (1st accused in Court below) from Jemaluang to Mersing on the 14th March, 1951. On driving through Jemaluang, a Detective Police Constable called out to the appellant by name, in the hope that he would have the car stopped. The Detective Police Constable did not, however, make any signs to the driver to stop the car and the car did not stop. As the Detective Police Constable suspected that opium was concealed in the car, he telephoned to the Mersing Police and the car was eventually stopped at a police stop one mile outside Mersing and was taken to the police station. Upon a search being made there, containers approximately 1½ inches in depth, screwed to the floor board and covered over with rubber matting were found in the front of the car both under the places where the driver and the appellant, the passenger, would normally have their feet. There were also found in the back foot wells of the car other similar containers. In the container under the appellant's feet were found 2 slabs of opium, and in the containers in the rear foot-wells of the car were found in all 9 slabs of opium. The police stated that when the appellant and the driver were stopped at the road block and when they entered the police station both of them looked pale and frightened. It was not suggested anywhere by the prosecution that the appellant was in charge of, or driving, the car or that he was the owner.

The learned President of the Sessions Court drew an inference of guilty knowledge on the part of the appellant because when the Detective Police Constable called out the appellant's name, he, the appellant, did not ask the driver to stop. For that reason the learned President held there was a *prima facie* against the appellant and called on him for his defence.

I have gone through the evidence of the prosecution with great care, but I cannot find anything in such evidence to raise more than the slightest suspicion (1) that the appellant had knowledge that the opium was concealed in the containers under the floor boards, (2) that such opium was in his custody, (3) that he had any control over it, (4) that he intended to exercise such control, or (5) that he was in any way in possession of it. The mere fact that he was a passenger in a car in which opium was very cleverly concealed in containers screwed to the floor boards underneath his feet cannot in my mind raise more than a mere